UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,703	03/15/2004	Jozef Babiarz	57983.000158	8971

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EXAMINER
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ART UNIT	PAPER NUMBER
2616	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
Office Action Summary	10/799,703	BABIARZ, JOZEF
	Examiner	Art Unit	
	Raj K. Jain	2616	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 07 November 2007.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-19* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-19* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on 15 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-11 and 14-19 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Hadi Salim et al (USP 6,625,118 B1) in view of Simcoe (USP

7,035,220 B1).

Regarding claims 1, 18 and 19, Hadi Salim discloses a method for admission

control of packet flows in a network (see abstract), the method comprising:

determining at least a flow rate associated with a plurality of packets entering or

exiting a network (see col 2 lines 53-63, flow rate is determined by means of a packet

flow control parameter to control the flow of packets from a source according to the

packet flow control parameter);

marking at least one predetermined bit in at least one of the plurality of packets if

the flow rate is greater than a predetermined rate (see Fig. 3, col 5 line 65- col 6 line 15,

a CE bit as a predetermined bit is marked based on congestion status, further "flags" or

predetermined bits that are marked are measured to see if the flow of packets exceeds

a threshold and rate is adjusted accordingly, col 1 lines 44-59); and

controlling the initiated flow of packets across the network based at least in part

on the marking of the at least one predetermined bit in the at least one of the plurality of

packets (again see col 1 lines 44-59 and col 6 lines 5-55).

Hadi Salim while discloses a flow rate across a network, however, Hadi Salim

explicitly fails to disclose initiating a flow of packets across a network.

Simcoe discloses a basic end-to-end congestion control within a network and

further discloses initiating a flow of packets across a network (col 5 lines 27-53; claim

1). Packet flow initiation allows the destination to inform the source whether to increase

or decrease the amount of data to send within a given interval. Thus it would have been

obvious at the time the invention was made to incorporate the teachings of Simcoe

within Hadi Salim so as to improve network congestion control by properly signaling the

source to initiate, increase, decrease or stop the flow packets based on network status.

Regarding claim 2, Hadi Salim discloses the network comprising of a plurality of

network elements, and the flow rate is determined at a first network element, where the

first network element is part of an access link of the network (see Fig. 4 with source,

routers and receivers, and the first network element the router A is part of the link

network.)

Regarding claims 3-5, Hadi Salim discloses where the at least one of the plurality

of packets comprises at least one signaling packet (see col 6 lines 17-20, signaling

packets ACK are shown, see Fig. 7).

Regarding claim 6, Hadi Salim discloses echoing signaling packet (see col 6 line 2.).

Regarding claim 7, Simcoe discloses cancelling the flow of packets across the network if the at least one predetermined bit in the at least one of the plurality of packets is marked (col 5 lines 27-53; claim 1). Reasons for combining same as for claim 1.

Regarding claim 8, Simcoe discloses initiated flow of packets across the network is controlled by an entity that controls the network (see col 1 lines 17-54, the destination measures and controls the of flow packets from the source and therefore is also the controlling entity). Reasons for combining same as for claim 1.

Regarding claim 9, Simcoe discloses the control of the initiated flow of admission of the additional packets across the network is based at least in part on priorities or importance of the plurality of packets and the additional initiated flow of packets (col 3 lines 8-19). Reasons for combining same as for claim 1.

Regarding claims 10 and 11, Hadi Salim discloses real time IP packets (abstract, general specifications).

Regarding claims 14, 15 Hadi Salim discloses where the predetermined rate is based on a network bandwidth allocated for the plurality of packets and used for a predetermined period of time (see col 2 lines 20-30, col 7 lines 23-35.).

Regarding claims 16, 17 Hadi Salim discloses computer application of subject system (see col 11 lines 1-33.).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Hadi Salim et al (USP 6,625,118 B1) in view of Simcoe (USP 7,035,220 B1),

further in view of Davies et al (USP 6,483,805 B1).

Hadi Salim and Simcoe fail to disclose VoIP applications and differentiated

services.

Davies discloses VoIP applications and differentiated services (see col 1 lines

14-20, col 7 lines 20-40.). Dynamically adapting packet flow thru the network based on

packet or network priorities using differentiated services provides optimal bandwidth

usage in a packet switched network.

Thus it would have been obvious at the time the invention was made to

incorporate the teachings of Davies within Hadi Salim so as to improve network

performance by providing differentiated services based on priorities to optimize network

performance.

Response to Arguments

Applicant's arguments with respect to claims 1-19 have been considered but are

moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raj K. Jain whose telephone number is 571-272-3145. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham can be reached on 571-272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Raj K. Jain
/Raj K. Jain/
January 10, 2008   *Art Unit 2616*

CHI PHAM
SUPERVISORY PATENT EXAMINER 1/18/08